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SUBJECT: HONG KONG POLICE READY TO PROSECUTE TIP IF VICTIMS
WILL PRESS CHARGES

1. (SBU) SUMMARY: Although Hong Kong uses a broader definition of sex trafficking in persons (TIP) than that found in international covenants, its officials across the board insisted to visiting G/TIP officers September 9 that identified sex TIP crimes continue to be rare. Police and immigration officers argued that while they look for TIP indicators during interviews of suspects detained for possible immigration or prostitution violations, evidence has shown that most of the sex workers come of their own volition, which would preclude them from being identified as TIP victims by Hong Kong authorities. On foreign domestic worker (FDWs), the Labor Department relies on public education campaign, surprise inspections, and the authority to revoke operating licenses to help protect the rights of the 270,000 FDWs in the territory, over half of whom are now Indonesian. Attempts to punish employment agencies for illegally withholding FDWs' passports generally prove unsuccessful, as most FDWs are unwilling to press charges after retrieving their passports with police intervention and the police do not pursue criminal investigations charges on their own. An Indonesian workers' NGO representative described an illegal salary structure that encourages Hong Kong employers to pay as little as half of the Minimum Allowable Wage of HKD\$3580. Fifty-three percent of Indonesian domestic workers surveyed by the NGO in 2005 reported being underpaid. END SUMMARY

Law Enforcement Efforts, TIP Definition Discussed

2. (SBU) Office to Monitor and Combat Trafficking in Persons (G/TIP) officers Mark Taylor and Christine Chan-Downer met with the Hong Kong government, foreign consulate officials, and migrant worker NGOs during their one-day visit to Hong Kong September 9. The Hong Kong police (HKP) outlined recently adopted measures to enhance their anti-human trafficking efforts. They report they have increased training to front-line officers, issued formal standardized procedures for trafficking in persons (TIP) investigations, increased the number of inspections of suspected vice establishments, and arranged with the Department of Justice to give legal advice at the early stages of TIP investigations. HKP stressed that "TIP," or people smuggling, was one of a select few issues the elite Organized Crime and Triad Bureau (OCTB) was dedicating resources to fighting.

3. (SBU) In response to the G/TIP officers' questions about how Hong Kong laws define TIP, OCTB Chief Superintendent Samson Yu explained that any movement of a person in or out of Hong Kong for the purposes of prostitution was a TIP crime under the Crimes Ordinance. Taylor noted this definition differed from that used in international TIP covenants which required elements of force, fraud or coercion to be considered a TIP crime. Taylor voiced concern that Hong Kong laws may focus too much on the movement of people and not on

the exploitative conditions that could cause someone already in Hong Kong to be forced into a trafficking situation. Yu acknowledged Hong Kong's definition cast a wider net for sex TIP crimes (though not covering labor trafficking), but that by no means implied Hong Kong does not take into account aggravating factors such as force, fraud and coercion when prosecuting TIP crimes. (Note: Although this was not raised at the meeting, Hong Kong's Crime Ordinance Section 130 does punish for harboring or controlling another person with the intention of committing unlawful sexual acts with others. This crime is not contingent on the cross-boundary movement of a person, and the punishment of 14 years is more stringent than the 10 years imprisonment for TIP. However, Hong Kong authorities do not report usage of this law in their reporting of trafficking cases. End note.) Presentations by the Hong Kong Immigration Department and Customs Department addressed 'smuggling' and 'trafficking' interchangeably, and focused on efforts to combat illegal smuggling into Hong Kong. When Taylor inquired how the Crimes Ordinance would address debt bondage or labor trafficking cases, Yu responded that offenders could be charged with "conspiracy to traffic," though during the meeting he acknowledged that this conspiracy centers around the transportation of individuals into Hong Kong for the purpose of prostitution. Post has requested HKP police provide further clarification on this point.

14. (SBU) Taylor was surprised that there had not been more TIP prosecutions given the low evidentiary threshold for TIP crimes and the fact that Hong Kong arrested 3,500 women (mostly from the PRC) for illegal prostitution last year alone. Yu insisted the HKP looked for certain TIP indicators when interviewing suspects arrested for prostitution and/or

immigration violations, including whether the person was assisted by other individuals in coming to Hong Kong illegally. Furthermore, when the HKP determined a person likely was not a TIP victim and handed the case over to immigration authorities, immigration officers also looked for TIP indicators during their interviews. While Yu did not elaborate on the TIP indicators used by HKP or immigration officers, he confirmed that they were in line with Hong Kong's definition of 'trafficking in persons'; i.e., relating to movement of persons and not relating to force or coercion. Yu noted his experience had shown the majority of women working in Hong Kong's sex trade came of their own volition and when caught, simply wanted to return home. Many of the women worked as prostitutes in mainland China as well, but they come to Hong Kong because they could make more money. When asked whether a woman who came to Hong Kong willingly to engage in prostitution but was later coerced or forced into sexual servitude could be considered a TIP victim in Hong Kong, Yu replied that such a person would not be considered a victim, due to their initial willingness to engage in prostitution. Individuals identified as TIP victims were required by Hong Kong law to testify in court and give evidence against their trafficker. All victims are returned to their country of origin after participation in court cases. (Note: The conflation of human trafficking and people smuggling under Hong Kong law seems to partly explain the difficulties experienced by Hong Kong law enforcement authorities in identifying victims of sexual servitude or forced labor. End Note.)

Challenged by Growing Foreign Domestic Helper Workforce

15. (SBU) With an estimated 270,000 foreign domestic workers (FDWs) in Hong Kong, Labor Department officials admitted it was a challenge to monitor all employers or employment agencies for possible violations of the Employment Ordinance. They point to public education campaigns, regular but unannounced inspections, and the power to revoke licenses as their primary tools to ensure labor violations are detected and punished. Currently, there are 1,000 Hong Kong employment agencies licensed to place FDWs, according to Assistant Commissioner Fong Ngai. The Labor Department

annually conducts approximately 1,000 surprise visits to employment agencies. Two agencies have had their licenses revoked for overcharging fees to FDWs this year. Authorities explained offenders do not get imprisoned for overcharging, but they can be fined up to HK\$50,000.

16. (SBU) Referring to U.S. concerns raised in the 2008 and 2009 TIP reports about some Hong Kong employment agencies reportedly illegally holding FDWs' passports, Fong noted keeping someone's passport with their consent or for certain administrative processing was not illegal. Fong did acknowledge there have been instances where HKP was called on to retrieve FDWs' passports from their employment agencies or employers. The problem, OCTB officers explained, is most FDWs decline to press charges against the agencies once their passports have been retrieved, thus making it hard to prosecute agencies for this practice.

17. (SBU) In response to Fong's question about how other jurisdictions with large numbers of FDWs dealt with labor-related violations, Taylor said some governments blacklist employment agencies to prevent them from doing future business. Although he agreed with Taylor that protecting FDWs was a shared responsibility between source and destination territories, Fong claimed the large amount of debt imposed on FDWs by agencies in their home countries was beyond Hong Kong's control. Taylor noted G/TIP often cited Hong Kong as a standard-bearer for the rights enjoyed by its FDWs, but there were always going to be people who would abuse the system, as is also seen in the United States. He encouraged the Hong Kong government to be proactive and seek out potential victims as most victims were ignorant of how and where to seek help.

NGO Outlines Underpayment Scheme

18. (SBU) Indonesian migrant NGO representative Eni Lestari told us some Hong Kong and Indonesia-based employment agencies operated an illegal scheme where they offered Indonesian FDWs at a discount rate to Hong Kong employers, sometimes 50 percent cheaper than the Minimum Allowable Wage of HKD\$3580 per month. Describing the plight of Indonesian domestic workers in Hong Kong as that 'akin to slavery', Lestari, stated that almost every Indonesian recruited for

work as a domestic worker in Hong Kong incurred a debt of approximately 21,000 Hong Kong dollars (approximately \$2,700) which required FDWs seven full months of work to pay off at the Minimum Allowable wage. An employer willing to pay the employment agency an agreed portion of their FDWs' training and administrative costs up front in one lump payment would only have to pay the FDW a HKD\$1800 monthly salary for the remainder of the 2-year contract. Lestari told us employment agencies coach employers that accept this arrangement to have their FDWs sign receipts showing they were paid the full minimum wage. A 2005 survey of FDWs by the Association of Indonesian Migrant Workers found 53 percent reporting they were not receiving the minimum wage. Lestari believed the situation remained the same today.

19. (SBU) Indonesian Consulate officials told us they had received some complaints about underpayment, but those cases were rare. The Indonesian Consulate cited, however, a similarly high figure representing recruitment costs for Indonesian FDWs -- HK\$20,000 (HK\$17,000 plus 3,000 in interest). Both Filipino and Indonesian migrant groups report that some women lose their jobs before repayment is complete. In these situations, Indonesian Consulate officials explained that the Hong Kong agencies had to find the FDW a new employer. The agency is allowed to charge no more than 10% of the first month's wage, though according to Lestari, the fees, which are added to existing debt, often exceed this legal limit. On October 5, Indonesian Consulate official Sri Setiawati told E/P Chief that FDWs who returned home before repayment of debt was complete, however, were not

normally liable for their debts since the Indonesia
Government did not want employment agencies going after FDWs
in their poor villages.

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